

Education for architects and building inspectors will improve access compliance.

- SB 1608 requires, for the first time, that architects and building inspectors complete specified hours of continuing education coursework in disability access-specific requirements. This responds to complaints by both the disability community and the building community that architects and building inspectors, along with others in the design, planning, and construction of buildings are not sufficiently educated in disability access requirements.

A new California Commission on Disability Access will focus on access compliance throughout the state.

- SB 1608 creates the 19-member California Commission on Disability Access, an independent state entity, to develop recommendations that will enable people with disabilities to exercise their right to full and equal access to public facilities and that will facilitate business compliance with the laws and regulations to avoid unnecessary litigation. The Commission's responsibilities will include:
 - Monitoring disability access compliance in California and making recommendations to the Legislature on needed changes in disability access laws.
 - Developing—with the Building Standards Commission—a master checklist for building inspectors to use for disability access compliance, and acting as an information center on disability access requirements.
 - Studying and issuing reports on disability access issues such as whether the Certified Access Specialist (CASP) program—which certifies and licenses inspectors who have significant knowledge of disability access laws—is meeting the needs of the disability and business communities.

SB 1608 will encourage businesses to use a Certified Access Specialist to inspect for physical access compliance and yet preserve plaintiff's right to recover for damages.

- SB 1608 requires that every local building department have a Certified Access Specialist (CASP) review and approve a business' plan for a building permit in order to minimize the inadvertent approval of a non-access compliant project.
- SB 1608 requires a CASp, when he or she determines that a business meets applicable construction-related accessibility standards, to issue a report of that determination. The business then would be permitted to display a CASp-issued numbered, watermarked "Disability Access Certificate."
- SB 1608 provides that a CASp inspection and report does not bind the court in any way and does not affect the court's ultimate authority to make findings of fact and law.
- SB 1608 provides that a CASp inspection and report does not prevent recovery of damages by a person with a disability who is personally or actually deterred from accessing a place of public accommodation because of an access violation.
- **SB 1608 does not affect a person's ability to collect damages or reduce a business' liability for damages for a violation.**

A qualified defendant in a lawsuit alleging physical access violations may request a limited stay and early evaluation conference to try and settle the access claims.

- SB 1608 allows a business owner who obtained a determination of compliance from a CASp (a “qualified defendant”) and who is later sued on a disability access claim to request a streamlined court procedure for a limited stay and an early evaluation of the claim. SB 1608 provides easy-to-use forms for this streamlined court procedure. **This stay and early evaluation conference procedure is not a ‘right-to-cure’ period nor is it a ‘safe harbor.’**
- SB 1608 requires a court, upon application by a “qualified defendant,” to issue an order (1) granting a stay of the accessibility claim for 90 days, and (2) scheduling a mandatory early evaluation conference within 35 days of the application at which both parties must appear in person. The stay would not apply to other causes of actions or claims and also would not apply if the plaintiff has obtained temporary injunctive relief in the accessibility claim.
- SB 1608 requires, at least 15 days before the conference, a defendant to share a copy of the CASp inspection report with the court and the plaintiff, and the plaintiff must provide the court and the defendant with a statement of the specific violations claimed, the amount of damages claimed and attorney’s fees and costs incurred. Unless the defendant can show good cause for failing to provide the CASp report prior to or at the conference, the court would lift the stay at the conclusion of the conference. The court may also lift the stay at the conclusion of the conference upon the plaintiff’s showing of good cause.
- SB 1608 provides that the purpose of the early evaluation conference includes evaluation of (1) whether the defendant is entitled to the temporary stay or has corrected or is willing to correct the alleged violations, and the timeline for doing so, and (2) whether the case can be settled.

An attorney who sends a Demand-for-Money letter or files a complaint is required to provide notice to defendant of specific rights and responsibilities.

- SB 1608 requires an attorney who either sends a “Demand for Money” letter to a business, or files a lawsuit against a business, alleging a physical access violation to send a specified notice to the business to help ensure the defendant is aware of his or her legal rights (including the CASp inspection and report provisions) as well as its obligations to comply with the disability access laws. **It is important to note that this is not a pre-lawsuit notification provision; there is nothing in SB 1608 which would set up constraints on our important civil rights laws. There are no preconditions that a person with a disability or his or her attorney must meet in order to file a civil rights action for a disability access violation.**

Either a local agency or an affected person may appeal to the Building Standards Commission regarding interpretation of an adopted accessibility standard.

- SB 1608 permits either a local agency or a person adversely affected to appeal a decision of a local agency regarding a disability access requirement to the Building Standards Commission and provides that the Commission may accept the appeal only if the issues involved have statewide significance.